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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 GLADYS P.,¹

12 Plaintiff

13 v.

14 ANDREW M. SAUL, Commissioner
15 of Social Security,²

16 Defendant.
17

Case No. 5:18-cv-01120-GJS

**MEMORANDUM, OPINION,
AND ORDER**

18 **I. PROCEDURAL HISTORY**

19 Plaintiff Gladys P. (“Plaintiff”) filed a complaint seeking review of the
20 decision of the Commissioner of Social Security denying her applications for
21 Supplemental Security Income (“SSI”) and Disability Insurance Benefits (“DIB”).
22 The parties filed consents to proceed before the undersigned United States
23 Magistrate Judge [Dkts. 10 and 11] and briefs addressing disputed issues in the case
24 [Dkt. 18 (“Pl. Br.”), Dkt. 22 (“Def. Br.”)]. The matter is now ready for decision.
25

26 ¹ In the interest of privacy, this Order uses only the first name and the initial of
27 the last name of the non-governmental party.

28 ² Andrew M. Saul, now Commissioner of the Social Security Administration, is
substituted as defendant for Nancy A. Berryhill. *See* Fed. R. Civ. P. 25(d).

1 For the reasons discussed below, the Court finds that this matter should be affirmed.

2 **II. ADMINISTRATIVE DECISION UNDER REVIEW**

3 Plaintiff filed applications for SSI and DIB alleging disability based primarily
4 on whole body pain, possible cirrhosis, and depression. [Dkt. 15, Administrative
5 Record (“AR”) 43.] Plaintiff’s applications were denied initially, on
6 reconsideration, and after a hearing before Administrative Law Judge (“ALJ”)
7 Dante Alegre [AR 1-6, 15-28.]

8 Applying the five-step sequential evaluation process, the ALJ found that
9 Plaintiff was not disabled. *See* 20 C.F.R. §§ 416.920(b)-(g)(1). At step one, the
10 ALJ found that Plaintiff had not engaged in substantial gainful activity since July 7,
11 2013, the alleged onset date. [AR 17.] At step two, the ALJ found that Plaintiff
12 suffered from lumbar strain and generalized arthritis. [AR 17.] The ALJ
13 determined at step three that Plaintiff did not have an impairment or combination of
14 impairments that meets or medically equals the severity of one of the listed
15 impairments. [AR 22.]

16 Next, the ALJ found that Plaintiff had the residual functional capacity
17 (“RFC”) to perform the full range of medium work. [AR 22.] Applying this RFC,
18 the ALJ found at step four that Plaintiff could perform her past relevant work as a
19 home health aide and a general clerk and thus she is not disabled. [AR 26.]
20 Plaintiff sought review of the ALJ’s decision, which the Appeals Council denied,
21 making the ALJ’s decision the Commissioner’s final decision. [AR 1-6.] This
22 appeal followed.

23 **III. GOVERNING STANDARD**

24 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to
25 determine if: (1) the Commissioner’s findings are supported by substantial evidence;
26 and (2) the Commissioner used correct legal standards. *See Carmickle v. Comm’r*
27 *Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Brewes v. Comm’r Soc. Sec.*
28 *Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012) (internal citation omitted).

1 “Substantial evidence is more than a mere scintilla but less than a preponderance; it
2 is such relevant evidence as a reasonable mind might accept as adequate to support a
3 conclusion.” *Gutierrez v. Comm’r of Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir.
4 2014) (internal citations omitted).

5 The Court will uphold the Commissioner’s decision when the evidence is
6 susceptible to more than one rational interpretation. *See Molina v. Astrue*, 674 F.3d
7 1104, 1110 (9th Cir. 2012). However, the Court may review only the reasons stated
8 by the ALJ in his decision “and may not affirm the ALJ on a ground upon which he
9 did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). The Court will not
10 reverse the Commissioner’s decision if it is based on harmless error, which exists if
11 the error is “inconsequential to the ultimate nondisability determination, or if despite
12 the legal error, the agency’s path may reasonably be discerned.” *Brown-Hunter v.*
13 *Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (internal quotation marks and citations
14 omitted).

15 IV. DISCUSSION

16 A. The ALJ Properly Considered Step Two

17 Plaintiff asserts that the ALJ erred at step two of the sequential evaluation
18 process by finding that she had no severe mental impairments. Plaintiff contends
19 that she has been consistently diagnosed with depression and prescribed a variety of
20 psychotropic medications including, Prozac, Seroquel, and Citalopram. [Dkt. 18 at
21 2-3.] Defendant argues that substantial evidence supports the ALJ’s finding that
22 Plaintiff did not have a severe mental impairment. [Dkt. 22 at 3-7.]

23 1. Federal Law

24 The Commissioner defines a severe impairment as “[a]n impairment or
25 combination of impairments . . . [that] significantly limit[s] your physical or mental
26 ability to do basic work activities,” including, inter alia: “understanding, carrying
27 out, and remembering simple instructions; use of judgment; responding
28 appropriately to supervision, co-workers and usual work situations; and dealing with

changes in a routine work setting.” 20 C.F.R. § 404.1522. “An impairment or combination of impairments may be found not severe only if the evidence establishes a slight abnormality that has no more than a minimal effect on an individual’s ability to work.” *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005) (emphasis added) (citations and internal quotation marks omitted). Step two “is a *de minimis* screening device [used] to dispose of groundless claims, and an ALJ may find that a claimant lacks a medically severe impairment or combination of impairments only when his conclusion is clearly established by medical evidence.” *Id.* (emphasis added) (citations and internal quotation marks omitted). The claimant bears the burden of proof at step two. *See Bustamante v. Massanari*, 262 F.3d 949, 953-54 (9th Cir. 2001). Significantly, the Ninth Circuit has determined that “[t]he mere existence of an impairment is insufficient proof of a disability.” *Matthews v. Shalala*, 10 F.3d 678 (9th Cir. 1993). In other words, a medical diagnosis alone does not make an impairment qualify as “severe.”

2. Analysis

In this case, the ALJ made extensive findings to support his determination that Plaintiff’s mental impairments were not severe. First, the ALJ gave “great weight” to the opinions of consultative physician, Earbin Stanicell, M.D., Board Certified in psychiatry, who conducted a complete consultative psychiatric evaluation of Plaintiff and the State Agency medical consultants who reviewed Plaintiff’s medical records. These physicians concluded that Plaintiff’s mental impairments were not severe. [AR 22.] In weighing this evidence, the ALJ found that the consultative psychiatrist examined Plaintiff personally, and his assessment was consistent with the longitudinal record. [AR 22.] Similarly, the ALJ noted that the State Agency medical consultants’ opinions were consistent with the opinion of Dr. Stanicell and there was nothing in the record to contradict their collective findings that Plaintiff lacked a severe mental impairment. The ALJ found that their assessments were supported by the record and other evidence demonstrating that

1 Plaintiff's mental impairments caused no more than a mild limitation. AR 22.

2 Second, the ALJ gave detailed consideration to the four functional areas
3 known as the "paragraph B" criteria. AR 20-21. In the first functional area
4 examining Plaintiff's ability to understand, remember, or apply information, the
5 ALJ found no limitation. The ALJ found that throughout the record, Plaintiff was
6 noted to be alert and oriented with an adequate fund of knowledge. [AR 20.] In the
7 second area, social functioning, the ALJ found Plaintiff had no limitation. [AR 21.]
8 The ALJ explained that Plaintiff's relationship with her family is okay, she grocery
9 shops and goes to church, and she had no difficulty interacting with clinical staff or
10 the consultative examiner. [AR 21.] In the third functional area—concentration,
11 persistence, or pace—the ALJ found Plaintiff had a mild limitation. [AR 21.] The
12 ALJ noted that Plaintiff's ability to concentrate was diminished by her "brain fog"
13 stemming from her depression. However, her thought processes were linear and
14 goal directed, she was able to perform serial threes and serial sevens and she could
15 spell the word "world" forwards and backwards. Further, during the hearing,
16 Plaintiff did not demonstrate any difficulty with understanding and she was able to
17 respond to questions appropriately and without delay. [AR 21.] In the last area,
18 adapting and managing oneself, the ALJ found Plaintiff experienced a mild
19 limitation because she had difficulty sleeping, crying spells, and intermittent suicidal
20 ideations. However, she had no problems with self-care, she could manage money
21 and she was able to maintain relationships with family and friends. Accordingly,
22 because Plaintiff's mental impairments caused no more than "mild" limitation in
23 any area, the ALJ determined her mental impairments were not severe. [AR 21.]

24 Plaintiff takes issue with the ALJ's reliance on the "outdated" opinions of the
25 state agency reviewing physicians and the psychiatric consultative examiner Dr.
26 Stanciell because those opinions, provided in 2014, predate the clear worsening of
27 her mental impairments demonstrated in 2016. [Dkt. 18 at 3.] According to
28

1 Plaintiff, the ALJ should have focused on her 2016 medical records which show
2 frequent abnormal mental status examination findings and suicidal ideation.

3 The ALJ did not err in relying on the 2014 psychiatric opinions for two
4 reasons. First, Plaintiff's symptoms, found to be mild, were consistent throughout
5 the record. For example, Plaintiff points to her "recent suicidal ideation in 2016"
6 and her more recent medical appointments where she was found to have a sad,
7 depressed, lethargic or slow affect as evidence that her depression worsened. [Dkt.
8 18 at 3; AR 443.] However, the findings from Dr. Stanciell's 2014 consultative
9 examination included a review of Plaintiff's "episodic suicidal thoughts" and her
10 "depressed and tearful mood." [AR 20, 406.] Despite these objective findings, Dr.
11 Stanicell found that Plaintiff would have no more than mild limitations due to her
12 mental impairments. [AR 409.] Thus, the consistent symptoms of Plaintiff's
13 depression demonstrated in both 2014 and 2016 were analyzed by Dr. Stanicell, but
14 ultimately found to be nonsevere.

15 Second, in addition to evaluating the medical opinion evidence, the ALJ
16 reviewed all of the medical evidence related to Plaintiff's mental impairments from
17 2016. [AR 20.] The ALJ noted that despite Plaintiff's continued struggle with
18 depression in April, May, and June 2016, medical records from her emergency room
19 visits in 2016 regularly noted that Plaintiff was oriented with a normal mood and
20 affect. [AR 20, 481.] The ALJ thus looked to the overall objective medical
21 evidence in the record when concluding that Plaintiff's mental impairment did not
22 affect her ability to work. This was not error.

23 Finally, even assuming, without deciding, that the ALJ technically erred by
24 not finding Plaintiff's mental impairments severe for the purposes of step two, such
25 error was harmless. *See Molina*, 674 F.3d at 1111 ("we may not reverse an ALJ's
26 decision on account of an error that is harmless"). Here, because the ALJ found
27 other impairments to be severe at step two, he proceeded to subsequent steps of the
28 sequential disability evaluation process. [AR 22-28.] Then, when crafting

1 Plaintiff's RFC, the ALJ considered the effect of all of her alleged limitations. *See*
2 *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007) (any error in failing to find an
3 impairment severe at step two is harmless if the ALJ considers any resulting
4 limitations in assessing a claimant's RFC). Accordingly, the Court finds no
5 prejudicial error at step two.

6 **B. The ALJ Properly Considered the Treating Physician's Opinion**

7 Plaintiff asserts that the ALJ improperly discounted the opinion of her treating
8 physician, Dr. Marc Debay. [Dkt. 18 at 3-7.] The Court finds that a remand or
9 reversal on this basis is not warranted.

10 **1. Federal Law**

11 "There are three types of medical opinions in social security cases: those
12 from treating physicians, examining physicians, and non-examining physicians."
13 *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009); *see also*
14 20 C.F.R. § 404.1527. In general, a treating physician's opinion is entitled to more
15 weight than an examining physician's opinion and an examining physician's opinion
16 is entitled to more weight than a nonexamining physician's opinion. *See Lester v.*
17 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). "The medical opinion of a claimant's
18 treating physician is given 'controlling weight' so long as it 'is well-supported by
19 medically acceptable clinical and laboratory diagnostic techniques and is not
20 inconsistent with the other substantial evidence in [the] case record.'" *Trevizo v.*
21 *Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017) (quoting 20 C.F.R. § 404.1527(c)(2)).³

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24 ³ For claims filed on or after March 27, 2017, the opinions of treating
25 physicians are not given deference over the opinions of non-treating physicians. *See*
26 20 C.F.R. § 404.1520c (providing that the Social Security Administration "will not
27 defer or give any specific evidentiary weight, including controlling weight, to any
28 medical opinion(s) or prior administrative medical finding(s), including those from
your medical sources"); 81 Fed. Reg. 62560, at 62573-74 (Sept. 9, 2016). Because
Plaintiff's claims for SSI and DIB were filed before March 27, 2017, the medical
evidence is evaluated pursuant to the treating physician rule discussed above. *See*
20 C.F.R. § 404.1527.

1 An ALJ must provide clear and convincing reasons supported by substantial
2 evidence to reject the uncontradicted opinion of a treating or examining physician.
3 *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (citing *Lester*, 81 F.3d at
4 830-31). Where such an opinion is contradicted, however, an ALJ may reject it only
5 by stating specific and legitimate reasons supported by substantial evidence.
6 *Bayliss*, 427 F.3d at 1216; *Trevizo*, 871 F.3d at 675. The ALJ can satisfy this
7 standard by “setting out a detailed and thorough summary of the facts and
8 conflicting clinical evidence, stating [her] interpretation thereof, and making
9 findings.” *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (quoting *Reddick*
10 *v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)); *see also* 20 C.F.R. § 404.1527(c)(2)-
11 (6) (when a treating physician’s opinion is not given controlling weight, factors such
12 as the nature, extent, and length of the treatment relationship, the frequency of
13 examinations, the specialization of the physician, and whether the physician’s
14 opinion is supported by and consistent with the record should be considered in
15 determining the weight to give the opinion).

16 **2. Background**

17 The record indicates that Plaintiff began treating with Dr. Debay on January
18 8, 2016. [AR 629.] Two months later on March 2016, Dr. Debay completed a
19 questionnaire on Plaintiff’s behalf in which he listed Plaintiff’s impairments as
20 “fibromyalgia/depression.” [AR 622.] Dr. Debay assessed Plaintiff’s residual
21 functional capacity stating that Plaintiff can: occasionally lift less than 10 pounds;
22 sit less than 2 hours total in an 8-hour workday with normal breaks; stand/walk less
23 than 2 hours total in an 8-hour workday with normal breaks; and she can never
24 crouch, climb stairs, or climb ladders. [AR 623.]

25 The ALJ addressed Dr. Debay’s opinion as follows:

26 This opinion is without substantial support from any objective clinical
27 or diagnostic findings, which obviously renders this opinion less
28 persuasive. Moreover, the opinion expressed is quite conclusory,

1 providing very little explanation of the evidence relied on in forming
2 that opinion. The doctor apparently relied quite heavily on the
3 subjective report of symptoms and limitations provided by the
4 claimant, and seemed to uncritically accept as true most, if not all, of
5 what the claimant reported. Yet, as explained elsewhere in this
6 decision, there exist good reasons for questioning the reliability of the
7 claimant's subjective complaints. This opinion is also inconsistent with
8 the claimant's admitted activities of daily living that have already been
9 described above in this decision.

10 [AR 26.]

11 **3. Analysis**

12 As the ALJ pointed out, Dr. Debay's opinion was not persuasive because it
13 was conclusory, without supporting explanation; not supported by objective clinical
14 or diagnostic findings; overly reliant on Plaintiff's subjective self-reports about the
15 extent of her limitations; and inconsistent with Plaintiff's own statements about her
16 functional abilities to undertake daily activities. [AR 26.] These constitute specific
17 and legitimate reasons for rejecting Dr. Debay's opinion.

18 First, Dr. Debay's opinion as to functional impairment was contradicted by
19 the bulk of the other medical opinions in the record. For instance, consultative
20 examining physician Dr. Seung Ha Lim performed an evaluation of Plaintiff on May
21 15, 2014. Plaintiff presented with a history of fibromyalgia, sleep apnea, restless leg
22 syndrome, kidney infection and hypertension. [AR 415.] Dr. Lim opined that while
23 Plaintiff's symptoms suggested fibromyalgia, Plaintiff could complete the full range
24 of medium work. [AR 415.] In addition, the state agency medical consultants,
25 found similar limitations, but also concluded that Plaintiff could perform the
26 equivalent of "medium work." [AR 26.] Of the medical opinions addressing
27 Plaintiff's impairments, three out of four of those opinions found that Plaintiff could
28 complete medium work. [AR 25.] The ALJ legitimately concluded that Dr.
Debay's opinion was an outlier among the opinion evidence, unsupported by the

1 other evidence in the record, and thus entitled to less weight. This was a specific
2 and legitimate reason to discount Dr. Debay's opinion.

3 Second, Dr. Debay's opinion was unreliable because it was unsupported by
4 his treatment records. [AR 26.] While Dr. Debay referred to Plaintiff's depression
5 and fibromyalgia, these diagnoses resulted in mild findings inconsistent with the
6 extent of limitations opined by Dr. Debay. As the ALJ explained, despite being
7 diagnosed with fibromyalgia, Plaintiff did not establish that it was a "medically
8 determinable" impairment (much less, that it was "severe") because it did not meet
9 the diagnostic criteria in SSR 12-2p. [AR 18-19.] In particular, there was no
10 evidence that other disorders that could cause the symptoms were excluded such as
11 her generalized arthritis. In regard to tender points, the ALJ explained that the
12 limited evidence noting some tender points was not specific, with no details about
13 the number or location of tender points. [AR 19.] This limited evidence was also
14 inconsistent with numerous examinations revealing no tender points. [AR 19, citing
15 AR 336, 425.] Further, as discussed above, Plaintiff's depression resulted in no
16 more than mild limitations. Dr. Debay's opinion that Plaintiff's non-severe
17 impairments resulted in extreme limitations is contradicted by substantial evidence.

18 Relatedly, the ALJ correctly found that Dr. Debay's opinion was conclusory.
19 *See Batson v. Comm'r*, 359 F.3d 1190, 1195 (9th Cir. 2004) (an ALJ may reject a
20 physician's opinion if it is conclusory, brief, and unsupported by the record);
21 *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (an ALJ does not need to
22 accept opinions that are conclusory, brief, and unsupported by clinical findings).
23 The form opinion asked Dr. Debay to identify the medical findings to support his
24 opined postural, non-postural, and environmental limitations. [AR 622-624.] Each
25 time, Dr. Debay did not identify any medical findings to support his opinion and
26 simply wrote "fibromyalgia and depression"—two diagnoses that do not support a
27 total disability finding in this case.

1 Third, without supporting clinical and objective testing, the ALJ correctly
2 rationalized that Dr. Debay relied quite heavily on Plaintiff's subjective self-reports
3 regarding the extent of her symptoms and limitations. [AR 26.] An ALJ may
4 discount a treating physician's opinion when it is based on subjective symptoms that
5 have been discredited. *Tonapetyan*, 242 F.3d at 1149 (a treating physician's opinion
6 based on subjective complaints of a claimant whose credibility has been discounted
7 can be properly disregarded). The ALJ's adverse credibility findings are a proper
8 basis for rejecting the limitations opined by Dr. Debay.

9 Overall, the ALJ cited specific and legitimate reasons supported by
10 substantial evidence for rejecting Dr. Debay's treating opinion.

11 **C. The ALJ's Credibility Determination is Supported by at Least One Clear**
12 **and Convincing Reason**

13 Plaintiff contends that the ALJ failed to provide sufficient reasons for
14 rejecting her testimony regarding her subjective symptoms and functional
15 limitations. [Dkt. 18 at 7-11.]

16 "Where, as here, an ALJ concludes that a claimant is not malingering, and
17 that she has provided objective medical evidence of an underlying impairment
18 which might reasonably produce the pain or other symptoms alleged, the ALJ may
19 reject the claimant's testimony about the severity of her symptoms only by offering
20 specific, clear and convincing reasons for doing so." *Brown-Hunter v. Colvin*, 806
21 F.3d 487, 492-93 (9th Cir. 2015) (internal citation and quotations omitted). Even if
22 "the ALJ provided one or more invalid reasons for disbelieving a claimant's
23 testimony," if she "also provided valid reasons that were supported by the record,"
24 the ALJ's error "is harmless so long as there remains substantial evidence
25 supporting the ALJ's decision and the error does not negate the validity of the ALJ's
26 ultimate conclusion." *Molina*, 674 F.3d at 1115 (internal citation and quotations
27 omitted).

1 “The ALJ may consider many factors in weighing a claimant’s credibility,
2 including (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
3 claimant’s testimony or between his testimony and conduct; (3) claimant’s daily
4 living activities; (4) claimant’s work record; and (5) testimony from physicians or
5 third parties concerning the nature, severity, and effect of claimant’s condition.”
6 *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002).

7 Here, the ALJ provided several reasons for discounting Plaintiff’s subjective
8 complaints. First, the ALJ found that Plaintiff’s statements concerning her
9 symptoms and functional limitations were unsupported by the objective medical
10 evidence. [AR 24.] As discussed above, many of Plaintiff’s treatment records were
11 consistently unremarkable and reflected normal to mild findings. [AR 24, 301-306,
12 316-320, 648-649, 656.] While medical evidence alone is not a basis for rejecting
13 pain testimony, it is one factor that the ALJ is permitted to consider. *See Rollins v.*
14 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Burch v. Barnhart*, 400 F.3d 676,
15 681 (9th Cir. 2005).

16 Second, the ALJ noted that Plaintiff’s course of treatment was conservative and
17 routine. [AR 23.] Specifically, Plaintiff testified that her physicians stopped
18 prescribing her medication and she used only oils, hot baths, and over-the-counter
19 Tylenol to alleviate her pain. [AR 42-44.] Further, in the past, her treatment had
20 consisted solely of prescription medication and topical gels. [AR 46.] An ALJ may
21 properly rely on the fact that only routine or conservative treatment has been
22 prescribed. *See Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995); *Meanel*,
23 172 F.3d at 1114 (finding that plaintiff’s claim that she experienced pain
24 “approaching the highest level imaginable was inconsistent with the ‘minimal,
25 conservative treatment’ that she received”). Thus, Plaintiff’s relatively routine and
26 conservative treatment was a specific, clear and convincing reason to discount her
27 subjective symptom testimony.

1 The ALJ also discussed Plaintiff's daily activities. [AR 23.] The Court need not
2 address whether this additional reason was valid because even assuming that it was
3 not, any error was harmless in light of the other legally sufficient reasons for the
4 ALJ's determination. *See Molina*, 674 F.3d at 1115 (where one or more reasons
5 supporting ALJ's credibility analysis are invalid, error is harmless if ALJ provided
6 other valid reasons supported by the record); *Batson*, 359 F.3d at 1197 (even if the
7 record did not support one of the ALJ's stated reasons for disbelieving a claimant's
8 testimony, the error was harmless where ALJ provided other valid bases for
9 credibility determination).

10 **V. CONCLUSION**

11 For all of the foregoing reasons, **IT IS ORDERED** that the decision of the
12 Commissioner finding Plaintiff not disabled is **AFFIRMED**.

13
14 **IT IS SO ORDERED.**

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16 DATED: July 11, 2019

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19 GAIL J. STANDISH
20 UNITED STATES MAGISTRATE JUDGE
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